UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN

DENARD ROBINSON; BRAYLON EDWARDS; MICHAEL MARTIN; SHAWN CRABLE, Individually and on behalf of themselves and former University of Michigan football players similarly situated,

Plaintiffs,

v.

NATIONAL COLLEGIATE ATHLETIC ASSOCIATION aka "NCAA"; BIG TEN NETWORK aka "BTN"; and BIG TEN CONFERENCE,

Defendants.

Hon. Terrence G. Berg

Magistrate Judge Kimberly G. Altman

Case No. 2:24-12355-TGB-KGA

ORAL ARGUMENT REQUESTED

REPLY IN SUPPORT OF DEFENDANTS' MOTION TO TRANSFER VENUE OR, IN THE ALTERNATIVE, TO STAY PROCEEDINGS

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INTRODUCTION

Plaintiffs offer no compelling reason for this Court to deviate from the norm of applying the first-to-file rule where, as here, all "three factors" are clearly "satisfied." *Baatz v. Columbia Gas Transmission*, 814 F.3d 785, 792 (6th Cir. 2016) ("[D]eviations from the [first-to-file] rule . . . should be the exception, rather than the norm." (citing *Church of Scientology of Cal. v. U.S. Dep't of the Army*, 611 F.2d 738, 750 (9th Cir. 1979)). Plaintiffs concede that *Chalmers*[1] was filed first, and cannot credibly dispute the other two factors given the substantial overlap in parties, legal claims, and factual allegations between the two cases. That should be the end of the matter.

Transfer is independently warranted under 28 U.S.C. § 1404(a). The key considerations under § 1404(a) favor transfer to avoid the duplicative proceedings urged by Plaintiffs, and are not outweighed by Plaintiffs' claims of inconvenience.

This case should accordingly be transferred to the Southern District of New York (SDNY) under the first-to-file rule or § 1404(a), or, in the alternative, stayed pending a judgment in *Chalmers*.

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[1] *Chalmers v. National Collegiate Athletic Association*, No. 1:24-cv-05008 (S.D.N.Y.).

ARGUMENT

I. The First-To-File Factors Indisputably Favor Transfer Or A Stay.

Chalmers was filed first, and substantial overlap exists among the parties and claims, so the first-to-file rule applies.

Start with the similarity of the parties, which does "not require that the parties in the competing lawsuits be *identical*." *Heyman v. Lincoln Nat'l Life Ins. Co.*, 781 F. App'x 463, 476 (6th Cir. 2019). Instead, as the Sixth Circuit has explained, the first-to-file rule is appropriate so long as "the parties in the two actions substantially overlap." *Baatz*, 814 F.3d at 790 (cleaned up). Here, they do.

On one side of the case caption, Plaintiffs ignore that their proposed class is a near identical copy to the proposed class in *Chalmers*. *See* Mot. to Transfer, ECF No. 39, PageID.483–85. The first-to-file rule does not compare named plaintiffs, but instead "requires the court to compare the proposed classes." *Cook v. E.I. DuPont de Nemours & Co.*, No. 3:17-CV-00909, 2017 WL 3315637, at *3 (M.D. Tenn. Aug. 3, 2017); *see also Baatz*, 814 F.3d at 790–91. Plaintiffs wrongly focus on the identity of the named plaintiffs, but both Plaintiffs here and the *Chalmers* plaintiffs seek to represent classes consisting of "[a]ll persons who were NCAA student-athletes prior to June 15, 2016." Mot. to Transfer, ECF No. 39, PageID.484. To the extent Plaintiffs now seek to represent a narrower class of only Michigan football players, that would change nothing, because the proposed class here would be wholly

subsumed by the proposed class in *Chalmers*. Accordingly, there is "substantial overlap in the putative class members." *Mitchell v. Bob Evans Rests., LLC*, No. 2:22-cv-2123, 2023 WL 2662309, at *3 (S.D. Ohio Mar. 27, 2023) (citing cases); *see also Byler v. Air Methods Corp.*, No. 1:17 CV 236, 2017 WL 10222371, at *3 (N.D. Ohio Aug. 30, 2017) (finding it "of no consequence" that the transferor court's "putative class is narrower than the class in the [transferee court]").

On the other side of the case caption, the presence of the NCAA and Big Ten here and in *Chalmers* alone establishes substantial overlap of the defendants. The core factual allegations and legal issues in both cases stem from nearly identical assertions regarding the NCAA's rules and conduct. *See* Mot. to Transfer, ECF No. 39, PageID.477–80, 485–90. Where, as here, the presence of a key party (or parties) in both cases results in significant overlap of the factual and legal issues to be resolved, the addition of dissimilar or ancillary defendants is insufficient to foreclose application of the first-to-file rule. *See, e.g.*, *Aero Advanced Paint Tech., Inc. v. Int'l Aero Prods., LLC*, 351 F. Supp. 3d 1067, 1071 (S.D. Ohio 2018); *Graessle v. Nationwide Credit Inc.*, No. C2-06-cv-00483, 2007 WL 894837, at *4 (S.D. Ohio Mar. 22, 2007); *see also Lovell v. United Airlines, Inc.*, No. 09-00146, 2010 WL 1783565, at *6 (D. Haw. Apr. 29, 2010). Were the law otherwise, any plaintiff could evade the first-to-file rule by simply adding additional defendants with some tenuous connection to the litigation, like BTN here. For the reasons set out in BTN's separate

Motion to Dismiss, the basis for Plaintiffs' claims against BTN is especially thin. Plaintiffs' decision to include BTN as a defendant should not enable them to evade a straightforward application of the first-to-file rule.

Additionally, the legal claims raised by Plaintiffs are identical in virtually every respect to those raised in *Chalmers*. *See* Mot. to Transfer, ECF No. 38, PageID.477–80, 485–90. Both cases allege an unreasonable restraint of trade and a group boycott/refusal to deal in violation of Section 1 of the Sherman Act, and unjust enrichment in violation of common law. *Id.* Plaintiffs' assertion that their case presents a unique vertical antitrust conspiracy is wrong. *Chalmers* expressly involves questions regarding the alleged antitrust implications of purported "horizontal and *vertical* agreements." *Chalmers*, Am. Compl., ECF No. 104 ¶ 161 (emphasis added). Because "[b]oth actions raise the same claims arising under the same laws using the same theory of the case [and b]oth cases seek damages, as well as declaratory and injunctive relief[,]" the similarity-of-the-issues factor of the first-to-file rule is satisfied. *Baatz*, 814 F.3d at 792.

II. Equitable Considerations Favor Transfer Or A Stay.

None of the equitable considerations identified by Plaintiffs justify departure from application of the first-to-file rule. Plaintiffs make no showing of the type of "extraordinary circumstances, inequitable conduct, bad faith, or forum shopping" that courts recognize may weigh against transfer. *Baatz*, 814 F.3d at 792 (quoting

EEOC v. Univ. of Pa., 850 F.2d 969, 972 (3d Cir. 1988)). Instead, Plaintiffs simply assert that it would be more convenient for them to remain before this Court. But Plaintiffs' argument invites duplicative and wasteful litigation in multiple courts, which contravenes the principles underlying the first-to-file rule: "encourag[ing] comity among federal courts of equal rank," "conserv[ing] judicial resources by minimizing duplicative or piecemeal litigation, and protect[ing] the parties and the courts from the possibility of conflicting results." *Id.* at 789 (cleaned up).

III. Transfer Is Warranted Under § 1404(a).

Transfer is independently warranted under § 1404(a). Plaintiffs' Opposition downplays the "extremely important" and often "decisive" interest of justice factor, *Carson Real Est. Cos., LLC v. Constar Grp., Inc.*, No. 10-CV-13966, 2011 WL 4360017, at *8–9 (E.D. Mich. Sept. 19, 2011) (quoting 15 Charles Alan Wright et al., Federal Practice & Procedure § 3854 at 246–47 (3d ed. 2007)), which weighs decidedly in favor of transfer here. *See* Mot. to Transfer, ECF No. 39, PageID.491–93. Plaintiffs do not meaningfully engage with Defendants' demonstration that the duplicative nature of the two matters creates a high risk of inconsistent rulings at each step of litigation and would waste both party and judicial resources. *See Int'l Show Car Ass'n v. Am. Soc'y of Composers, Authors & Publishers*, 806 F. Supp. 1308, 1314–15 (E.D. Mich. 1992) (transferring an action to the SDNY to "promote uniform decision-making in th[e] complex field" of antitrust litigation). This is the

precise scenario § 1404(a) was designed to prevent. *See Wayne Cnty. Emps.' Ret. Sys. v. MGIC Inv. Corp.*, 604 F. Supp. 2d 969, 977 (E.D. Mich. 2009) ("There can be no dispute that to allow two separate district courts . . . to address almost identical causes of action involving identical issues in class actions whose members overlap[] would be an inefficient use of judicial resources." (citation omitted)).

While Plaintiffs instead emphasize deference to their chosen forum, that consideration has less weight in cases involving copycat nationwide class claims. *See id.* at 976 ("The fact that this is a class action weakens the plaintiff's claims for deference to its choice of venue . . . ."); *see also Sabol v. Ford Motor Co.*, No. 2:14-cv-543, 2014 WL 6603358, at *5 (S.D. Ohio Nov. 19, 2014) (collecting cases). And aside from some of the named Plaintiffs, the likely witnesses in this litigation—both party and non-party—are scattered over many different jurisdictions. Moreover, Defendants will be greatly inconvenienced by having to defend against overlapping factual and legal claims in two separate forums if this case were to proceed in this District. *See Fox v. Massey-Ferguson, Inc.*, No. 93-cv-74615, 1995 WL 307485, at *2 (E.D. Mich. Mar. 14, 1994).

IV. At A Minimum, A Stay Is Warranted.

At minimum, a stay is warranted to "promote[] judicious use of resources and . . . simplify the issues in this litigation," *Depauw v. Mortg. Elec. Registration Servs., Inc.*, No. 11-12398, 2011 WL 4944479, at *1 (E.D. Mich. Oct. 18, 2011),

particularly because *Chalmers* is already considerably further along the litigation lifecycle than this action. *See Chalmers*, No. 1:24-cv-05008, ECF Nos. 116, 125 (motion to dismiss briefed in 2024 and argued on January 27, 2025). Nothing in Plaintiffs' brief counsels against this judicially efficient step.

CONCLUSION

The Court should grant Defendants' Motion to Transfer Venue or, in the Alternative, to Stay Proceedings in this action pending resolution of *Chalmers v. National Collegiate Athletic Association*, No. 1:24-cv-05008 in the SDNY.

Dated: April 14, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on April 14, 2025, I electronically filed the foregoing Reply in Support of Defendants' Motion to Transfer Venue or, in the Alternative, to Stay Proceedings with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all parties and counsel of record.

Dated: April 14, 2025

By: */s/ Rakesh Kilaru*

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